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RECENT ENGLISH DECISIONS.

High Court of Chancery.

GOODHART v. HYETT.

The right of one proprietor to an uninterrupted flow of water, by means of pipes which run through the land of another, carries with it the right to enter upon that land for the purposes of cleansing and repairing, or otherwise for the preservation of the pipes ; and the court will grant an injunction to restrain the servient owner from the commission of any act which causes the dominant owner greater difficulty and expense in the exercise of his rights, or which, if suffered, might materially affect his rights in future.

THIS action was brought by the plaintiff to restrain the defendant from building over any portion of a line of pipes, and thereby interfering with the plaintiff's right to an uninterrupted flow of water. The only question was whether the plaintiff had made out a sufficient case for an injunction.

The facts were shortly these. The plaintiff was the owner of the Manor House at Tooting, and during a period of one hundred years he and his predecessors had enjoyed the right to an uninterrupted flow of water from a neighboring reservoir known as "The Bottomless Pit." The water was conveyed from "The Bottomless Pit" to the Manor House by means of a line of underground pipe, which in its course ran through several plots of land belonging to the defendant, and where the defendant, before the commencement of this action, had begun to build some houses.

At the trial the evidence proved the plaintiff's right to an uninterrupted flow of water from "The Bottomless Pit" to the Manor House by means of the line of pipes above mentioned, and it was also proved that, if the buildings in question were completed, the plaintiff would ever after have greater difficulty, and be put to greater expense, in repairing and cleansing the pipes than was previously the case.

Karslake, Q. C., and *Dickenson*, for the plaintiff.

Higgins, Q. C., and *Spence*, for the defendant.—The damage apprehended is theoretical, and not inevitable ; therefore the plaintiff has no right to an injunction : *Cooper v. Crabtree*, 20 Ch. D. 589 ; *Pattisson v. Gilford*, L. R., 18 Eq. 259. The buildings will not disturb the plaintiff's enjoyment of his easement, and he is entitled to nothing more than the enjoyment of his easement, and that

enjoyment is limited in extent ; *Gayford v. Moffatt*, L. R., 4 Ch. 133 ; *Earl of Cardigan v. Armitage*, 2 B. & C. 197 ; *Gerrard v. Cooke*, 2 Bos. & Pul. N. R. 109 ; *Wood v. Sutcliffe*, 2 Sim. N. S. 163 ; *Clifford v. Hoare*, L. R., 9 C. P. 362.

Karslake, Q. C., in reply, referred to Gale, p. 570, 5th ed. ; *Bower v. Hill*, 1 Bing. N. C. 555 ; *Harrop v. Hirst*, L. R., 4 Ex. 43 ; *Goodson v. Richardson*, L. R., 9 Ch. 221.

NORTH, J., after stating the above-mentioned facts and the evidence as to the existence of the plaintiff's easement, continued :—

The plaintiff has established his right to a supply of water from the reservoir known as “The Bottomless Pit,” by means of the pipes which in their course run through the land of the defendant. How far then has the defendant interfered with that right ? The right carries with it the right to do whatever may be necessary for its preservation. This is clearly laid down by the authorities. [Here his lordship referred to a passage in Bracton, lib. 4, fol. 232, a, ; Gale (5th ed.) 529 ; *Bell v. Twentyman*, 1 Q. B. 766 ; *Pomfret v. Ricroft*, 1 Saund. 322, b.] The result is that the plaintiff, having established his right to an uninterrupted flow of water by means of the pipes going through the land of the defendant, has also established a right to enter upon that land for the purpose of cleansing and repairing the pipes.

The justification made by the defendant is that the buildings which he proposes to erect are not of such a character as would interfere with the plaintiff in the exercise of his right. But this is not enough. The plaintiff must not be substantially obstructed in the exercise of his right. The plaintiff's evidence is, in effect, that the buildings will prevent the repair of the pipes, and the defendant's evidence is that such repairs can be done by sinking shafts and driving headings into the ground. Now, the question is not whether the repairs can be done by the skill of an engineer, but whether they can be done after the erection of the buildings as easily as before their erection. I am of opinion that the repairs could not be done without greater difficulty and additional expense. The plaintiff then has not the same opportunity as he had before, and he has not a reasonable opportunity of access, and, therefore, the defendant is substantially interfering with the plaintiff in the exercise of his rights, and he is entitled to be protected by an injunction.

Again, if the plaintiff allowed the defendant to go on with the buildings in question, some fifty years hence it might very well happen that the defendant or his successors might build other houses of a different character to the actual injury of the plaintiff's pipes. The plaintiff would then have no remedy, for the answer to his complaint would be, You allowed the defendant to build smaller houses without any remonstrance whatever, and you must be taken to have acquiesced in an interference with your rights. It seems to me that a time might arise when the plaintiff's rights might be materially affected, and, therefore, the plaintiff is entitled to the injunction which he now asks.

Injunction granted.

The right to an easement in or over another's land, naturally and necessarily involves also the right to enter on that land, and to do everything reasonably necessary for the beneficial enjoyment of such easement; and correspondingly to restrain the owner of such land from doing anything to materially interfere with such enjoyment, or render it more onerous for the other.

If, therefore, the easement be a right of way, its possessor has the right not only to repair the way, and remove any obstructions placed therein (*Doane v. Badger*, 12 Mass. 70; *Atkins v. Bordenman*, 2 Met. 457; *Wyntkoop v. Burger*, 12 Johns. 222; *Roberts v. Roberts*, 55 N. Y. 275; *McMillen v. Cronin*, 13 Hun 68; 75 N. Y. 474; *Thompson v. Uglow*, 4 Oreg. 369), but also, if caused by the land owner, to pass over his adjoining land, until such obstructions be removed (*Leonard v. Leonard*, 2 Allen 543; *Farnum v. Platt*, 8 Pick. 339; *Bass v. Edwards*, 126 Mass. 449; *Selby v. Nettlefold*, 9 Ch. App. 111; *Hawkins v. Carhines*, 3 H. & N. 914).

If the easement be a ditch or open drain, its possessor must have the right, when necessary, to enter upon the other's land to clear out the drain, and even to deposit the obstructions on the bank or adjoining land through which the drain extends, doing no wanton or unnecessary damage: *Prescott v. White*,

21 Pick. 341. And see *Finlinson v. Porter*, L. R., 10 Q. B. 188; *Prescott v. Williams*, 5 Met. 429; *Pico v. Colimas*, 32 Cal. 578.

If it be a right to lay and continue water-pipes beneath the surface, this involves the right to dig up that surface, to examine and clear out, or otherwise repair, such lands. And, therefore, an action at law will clearly lie in such case for any unauthorized interference with the easement.

And the right to enjoin the servient owner from interfering with the easement or obstructing its enjoyment, is also well recognised in America; though perhaps not so freely used as in England. Indeed, it has been sometimes thought, courts of equity would not interfere, in case of a disputed right to an easement, until the plaintiff's rights had been determined in a suit at law unless the act of the defendant was of a continuing or permanent character, and liable to do an injury which could not well be redressed at law. In such cases, however, a preliminary or temporary injunction is often granted until the right can be definitely determined at law. See *Burnham v. Kempton*, 44 N. H. 78; *Dana v. Valentine*, 5 Met. 8; *Cummings v. Barrett*, 10 Cush. 186; *Goddard on Easements* (Bennett's ed.) 366, and cases cited; *Merrifield v. Lombard*, 13 Allen 16.

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